

EXHIBIT A

In The Matter Of:

DANIEL WHALEN

v.

CSX TRANSPORTATION, INC.

WHALEN, DANIEL - Vol. 1
January 16, 2015

MERRILL CORPORATION

LegalLink, Inc.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

DANIEL WHALEN,
Plaintiff,

Civil No. 13-cv-3784
-against-

CSX TRANSPORTATION, INC.,
Defendant.

-----x

CSX TRANSPORTATION, INC.,
Defendant/Third-Party Plaintiff,

-against-

HAWORTH INC. and OFFICE ENVIRONMENTS
SERVICE, INC.,
Third-Party Defendants.

-----x

January 16, 2015

11:49 a.m.

Videotaped Deposition of DANIEL WHALEN,
pursuant to notice, at the offices of
Wilson Elser Moskowitz Edelman & Dicker
LLP, New York, New York, before Mark
Richman, a Certified Shorthand Reporter,
Registered Professional Reporter and
Notary Public within and for the State of
New York.

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 PHILIP J. DINHOFFER, LLC 3 Attorneys for the Plaintiff 4 77 N. Centre Avenue, Suite 311 5 Rockville Centre, NY 11570 6 BY: PHILIP J. DINHOFFER, ESQ. 7 (pjdlc2806@yahoo.com) 8 ECKERT SEAMANS CHERIN & MELLOTT, LLC 9 Attorneys for Defendant/Third-Party 10 Plaintiff CSX Transportation, Inc. 11 10 Bank Street, Suite 700 12 White Plains, N.Y. 10606 13 BY: LAWRENCE R. BAILEY, Jr., ESQ. 14 ALAN MURAIDEKH, ESQ. 15 (lbailey@eckertseamans.com) 16 (amuraidekh@eckertseamans.com) 17 McCARTHY & ASSOCIATES 18 Attorneys for Third-Party Defendant 19 Office Environments Service, Inc. 20 One Huntington Quadrangle 21 Suite 2018 22 Melville, NY 11747 23 BY: MICHAEL D. KERN, ESQ. 24 (mkern@hanover.com) 25 WILSON ELSEER MOSKOWITZ EDELMA & DICKER, LLP Attorneys for Third-Party Defendant Haworth, Inc. 150 East 42nd Street New York, NY 10017 BY: RICHARD H. RUBENSTEIN, ESQ. SARA PAPASIDERO * ALSO PRESENT: ROBERT GIBBS, Videographer CHRISTOPHER VAUGHAN, CSX (*Awaiting admission)</p>	<p style="text-align: right;">Page 4</p> <p>1 DANIEL WHALEN 2 the attorney for defendant and 3 third-party plaintiff CSX 4 Transportation Inc. And also seated 5 with me, helping me, is Allan 6 Muraidekh, M-U-R-A-I-D-E-K-H, my 7 associate. 8 MR. DINHOFFER: And the gentlemen 9 in the back? 10 MR. BAILEY: He's on the record. 11 He doesn't speak. His attendance is 12 noted on the transcript. He don't 13 speak. 14 MR. DINHOFFER: But his 15 attendance is noted on the transcript? 16 MR. BAILEY: Yes, I gave him 17 his name and who he is. 18 MR. DINHOFFER: Thank you. 19 MR. RUBENSTEIN: Richard 20 Rubenstein, Wilson Elser, for 21 third-party defendant Haworth Inc. 22 MR. KERN: Michael D. Kern 23 from McCarthy & Associates for 24 third-party defendant Office 25 Environments Services.</p>
<p style="text-align: right;">Page 3</p> <p>1 DANIEL WHALEN 2 THE VIDEOGRAPHER: Good 3 morning, everyone. This is the 4 video operator speaking, Robert 5 Gibbs of Merrill Legal Solutions of 6 Los Angeles, 20750 Ventura 7 Boulevard, suite 205, Woodland 8 Hills, California 91364. 9 Today's January 16, 2015 and the 10 time is 11:49 AM. We are at the 11 offices of Wilson, Elser, Moskowitz, 12 150 East 42nd Street, New York City, 13 New York 10017 to take the videotaped 14 deposition of Mr. Daniel Whalen in the 15 matter of Daniel Whalen versus CSX 16 Transportation Inc., et al., in the 17 United States District Court, Southern 18 District of New York, case number 19 13-civ-3784 (LGS). 20 Will counsel please introduce 21 themselves for the record. 22 MR. DINHOFFER: Philip Dinhofer 23 for the plaintiff. 24 MR. BAILEY: Lawrence R. Bailey, 25 Jr. of Eckert Seamans Cherin & Mello,</p>	<p style="text-align: right;">Page 5</p> <p>1 DANIEL WHALEN 2 THE VIDEOGRAPHER: Thanks so 3 much. 4 Will the court reporter, Mark 5 Richman of Merrill Legal Solutions 6 please swear the witness. 7 DANIEL WHALEN, Having been 8 called as a witness, having been 9 first duly sworn by the Notary 10 Public (Mark Richman), was examined 11 and testified as follows: 12 MR. BAILEY: Let's go off the 13 record for a moment. 14 THE VIDEOGRAPHER: One moment. 15 Time is 11:51 AM, we are now off 16 the record. One moment. One 17 moment. Recording has stopped. 18 (Discussion was held off the 19 record.) 20 THE VIDEOGRAPHER: Time is 21 11:54 AM, back on the record. 22 MR. BAILEY: To repeat what was 23 said off the record, it is my 24 understanding Mr. Dinhofer is creating 25 his own video of this deposition and</p>

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1 DANIEL WHALEN
 2 that he is also leaving the video on
 3 at all times so that conversations or
 4 words said that are off the record
 5 will be on his video.
 6 I have officially asked Mr.
 7 Dinhofer to preserve the video because
 8 it may be an issue as being evidence
 9 at some later point in time and I have
 10 also informed Mr. Dinhofer that I wish
 11 a copy of it at my expense, assuming
 12 the cost is reasonable. And so I
 13 request it, I've requested it now on
 14 the record, I will request it again
 15 after this deposition is done by
 16 notice, appropriate notice, but I ask
 17 that it be preserved and that I be
 18 provided with -- informed of the cost
 19 of making -- of obtaining a copy of
 20 same.
 21 Now we can go back on the
 22 record. I'm going to start, continue
 23 now with the deposition.
 24 EXAMINATION BY MR. BAILEY:
 25 Q. Good morning, Mr. Whalen.

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1 DANIEL WHALEN
 2 Q. Now for what do you take the
 3 other medication you mentioned?
 4 A. Which medication?
 5 Q. I thought you said Valium?
 6 A. Yes.
 7 Q. You also take Valium?
 8 A. Yes.
 9 Q. Okay, what do you take that
 10 for?
 11 A. I have an anxiety disorder.
 12 Q. And how long have you had that
 13 anxiety disorder?
 14 A. A long time.
 15 Q. More than ten years?
 16 A. Approximately ten years.
 17 Q. And have you been taking
 18 Valium during that entire ten-year
 19 period?
 20 A. No.
 21 Q. When did you start taking
 22 Valium?
 23 A. Approximately ten years ago.
 24 Q. Okay, that's what I asked.
 25 Okay. And what dose of Valium do you

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1 DANIEL WHALEN
 2 A. Good morning.
 3 Q. Mr. Whalen, have you taken any
 4 over-the-counter medication in the last
 5 24 hours?
 6 A. Yes.
 7 Q. What over-the-counter
 8 medication have you taken in the last 24
 9 hours?
 10 A. Excedrin Migraine Strength.
 11 Q. Have you taken any
 12 prescription medicines in the last 24
 13 hours?
 14 A. Yes.
 15 Q. What prescription medicines
 16 have you taken in the last 24 hours?
 17 A. Gavatin and Valium.
 18 Q. And what is Gavatin prescribed
 19 for?
 20 A. Relief of neuro pain. Well
 21 it's actually -- I don't know the entire
 22 description of what it's used for.
 23 Q. What doctor prescribed it for
 24 you?
 25 A. Dr. Valerie Zarccone.

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1 DANIEL WHALEN
 2 take?
 3 A. The prescription is a 10
 4 milligram tablet.
 5 Q. And how many times a day?
 6 A. As needed.
 7 Q. In the last month, what's the
 8 most Valium pills you've taken in one
 9 day?
 10 MR. DINHOFER: By one day do
 11 you mean a 24-hour period or the
 12 daylight of the day?
 13 MR. BAILEY: 24-hour period.
 14 MR. DINHOFER: Thank you.
 15 A. I was just issued a new
 16 prescription for an unrelated or related
 17 issue for sleeping because I was unable
 18 to sleep, so the dosage was increased.
 19 Q. Okay.
 20 A. So I can take more.
 21 Q. All right.
 22 A. To sleep.
 23 Q. Sorry, I didn't mean to cut
 24 you off. When -- what was the
 25 prescription increased to? I thought you

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 146</p> <p>1 DANIEL WHALEN 2 with these dates. I remember them 3 closing down for a holiday. I think I 4 was, it was awfully quick. I don't know. 5 Middle or end of December -- of November 6 of that year. 7 MR. BAILEY: Now let's go off 8 tape, off the record. I've gotten 9 a note that there's two minutes 10 left on the tape so he has to 11 change the tape. 12 THE VIDEOGRAPHER: One moment 13 please, watch your microphones. 14 Here now marks the end of tape 2 of 15 the deposition of Mr. Daniel 16 Whalen. Time is 3:36 p.m., we're 17 now off the record. One moment. 18 Recording has stopped. 19 (A recess was had.) 20 THE VIDEOGRAPHER: Here now 21 marks the beginning of tape 3 of 22 the deposition of Mr. Daniel 23 Whalen, time is 3:42 p.m., back on 24 the record. 25 Q. How long would you -- did you</p>	<p style="text-align: right;">Page 148</p> <p>1 DANIEL WHALEN 2 November 8th, 2011? 3 A. Yes. 4 Q. You understand what I'm 5 asking? 6 A. Yes. 7 MR. DINHOFFER: You mean was 8 there an eleven-year gap? 9 Q. There was an eleven-year gap, 10 but did you see him in between? 11 A. No, I did not see him in 12 between. 13 Q. And did you see Dr. Krosser 14 again? 15 A. Dr. Krosser was who Dr. 16 Zarcone referred me to after the accident 17 of November 8th, 2011. 18 Q. And you told us that he sent 19 you for physical therapy? 20 A. Correct. 21 Q. I'm saying did you see him 22 again? Or did you only see him that one 23 time when he sent you for physical 24 therapy? 25 A. No, this, I saw him every</p>
<p style="text-align: right;">Page 147</p> <p>1 DANIEL WHALEN 2 go through physical therapy in that first 3 section starting around Thanksgiving of 4 2011? 5 A. Between eight and ten weeks, 6 is a guess. 7 Q. And what kind of physical 8 therapy did they give you? 9 A. They gave me electric 10 stimulus, pads to my neck, upper back and 11 then massage. 12 Q. Had you ever been treated by 13 Dr. Krosser before your accident of 14 November 8th, 2011? 15 A. I, I think so. 16 Q. Do you recall if you were 17 treated back, by him back in December of 18 2000 when you had the epidural injections 19 from Dr. Choi? 20 A. Yes. That's, that's the 21 connection, Krosser, yes, that's the 22 connection, Krosser and Choi, yes. 23 Q. And did you see him after 2000 24 up until -- was the first time you saw 25 him again after the year 2000 and after</p>	<p style="text-align: right;">Page 149</p> <p>1 DANIEL WHALEN 2 three or four -- every three weeks I 3 think during the course of physical 4 therapy. 5 Q. And after you stopped physical 6 therapy the first time, did you see him 7 again? I don't know yet if you went to 8 physical therapy again so I'm just saying 9 after that six or eight period, week 10 period of physical therapy did you ever 11 see him again? 12 A. I stopped physical therapy and 13 went to Dr. Krosser with a complaint and 14 Dr. Krosser told me to stop going to 15 physical therapy and that they were going 16 to approach the prospect of the anterior 17 fusion. 18 Q. And what did you tell him, to 19 your knowledge, that made him stop the 20 physical therapy? 21 A. When I was in physical therapy 22 they would put these electric stimulator 23 pads on my neck and during the course of 24 that stimulation my left arm would go 25 into spasm, uncontrollable spasms and it</p>

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<p style="text-align: right;">Page 150</p> <p>1 DANIEL WHALEN 2 continued. And the last day that I went 3 to physical therapy and it happened it 4 was so bad that I just went to 5 Dr. Krosser and explained to him, I said 6 this is what, this is what's going on and 7 then he said stop going to physical 8 therapy. 9 Q. Now, after you saw him and he 10 said we're going to look at the anterior 11 thing, what happened next in terms of 12 your medical treatment? 13 A. He sent me to a Dr. Abrams. 14 Q. And what kind of doctor was 15 he? 16 A. I believe he's a surgical 17 neurologist. 18 Q. Okay. 19 A. Is that, is there such a 20 thing? 21 MR. DINHOFER: Put it the 22 other way around, say neurosurgeon. 23 A. Neuro. 24 MR. DINHOFER: That's okay, 25 same intent.</p>	<p style="text-align: right;">Page 152</p> <p>1 DANIEL WHALEN 2 What's your age? When's your birthday? 3 Okay, into the room you go. 4 Q. Just so we're clear, no doctor 5 or nurse asked you, from when you arrived 6 at the hospital until you went under the 7 anesthesia, what your complaints are? 8 A. No. 9 Q. Okay. And how long were you 10 hospitalized for that surgery? 11 A. Just overnight. One day, 12 spent the night, the next morning I was 13 released. 14 Q. And what complaints did you 15 have when you were released the next 16 morning? 17 A. None. 18 Q. Now, when is the next time you 19 saw a doctor, whether or not it was 20 Abrams, whether or not it was Krosser, 21 after you were released from the hospital 22 in April of 2012? 23 A. Some time in December of 2012. 24 Q. Did you undergo any physical 25 therapy between the surgery and December</p>
<p style="text-align: right;">Page 151</p> <p>1 DANIEL WHALEN 2 A. Thank you, Phil. I was close, 3 I was in the ball park. 4 Q. And did he perform some sort 5 of surgery on you? 6 A. Both Dr. Krosser and Dr. 7 Abrams agreed to do an anterior cervical 8 fusion. 9 Q. And when did you undergo that 10 procedure? 11 A. That was in April 2012. 12 Q. And what were your complaints 13 when you went to the hospital to have 14 that surgery? What did you report to the 15 hospital as your complaints when you went 16 to the hospital to have that surgery? 17 A. I didn't report any complaints 18 to the hospital. 19 Q. They didn't ask you what your 20 complaints are, some doctor or nurse at 21 the hospital? 22 A. They said what are you here 23 for? I said I'm here for a cervical 24 fusion, anterior cervical fusion. They 25 looked at my chart. What's your name?</p>	<p style="text-align: right;">Page 153</p> <p>1 DANIEL WHALEN 2 of 2012? 3 A. No. 4 Q. And then what was the next -- 5 who did you see in December of 2012? 6 A. A Dr. Richard Radner. 7 Q. And why did you go to see him? 8 A. Because I had a friend who had 9 basically, was in basically the same 10 situation as I was and recommended Dr. 11 Radner and said that they had had surgery 12 with him and he fixed him. 13 Q. Now let me stop for a moment 14 and take a step back. 15 You did not go to work on 16 November 9th, 2011, correct? The next 17 day after the accident? 18 A. No, no. 19 Q. When did you return to work 20 after November 8th, 2011? 21 A. The end of July of that year. 22 Q. Of 2012? 23 A. Yes. 24 Q. And when you went back to 25 work, what complaints did you have, if</p>

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<p style="text-align: right;">Page 154</p> <p>1 DANIEL WHALEN</p> <p>2 any?</p> <p>3 A. I had --</p> <p>4 Q. With reference to your neck?</p> <p>5 A. I had no complaints whatsoever.</p> <p>6 Q. And then what happened, when</p> <p>7 did you start having more complaints --</p> <p>8 start having complaints after you went</p> <p>9 back to work?</p> <p>10 A. Approximately two months after</p> <p>11 I had been working, approximately.</p> <p>12 Q. All right. And what were the</p> <p>13 complaints?</p> <p>14 A. Just a renewal of, of the pain</p> <p>15 that I had originally. It was coming</p> <p>16 back.</p> <p>17 Q. And that was in the neck?</p> <p>18 A. It was in the neck, shoulder.</p> <p>19 Q. Which shoulder?</p> <p>20 A. I believe this time I was</p> <p>21 having problem with my left shoulder, if</p> <p>22 I'm not mistaken.</p> <p>23 Q. And any other complaints at</p> <p>24 that point in time?</p> <p>25 A. There could have been a myriad</p>	<p style="text-align: right;">Page 156</p> <p>1 DANIEL WHALEN</p> <p>2 results of the tests and he said you</p> <p>3 can't, you can't do your job any more.</p> <p>4 You -- according to his CAT scan or MRI,</p> <p>5 whatever he took, he said you just, you</p> <p>6 have to stop working at your job.</p> <p>7 MR. BAILEY: Mark this as the</p> <p>8 next exhibit.</p> <p>9 (Defendant's Exhibit N</p> <p>10 for identification, Bates stamp RRB</p> <p>11 1-042.)</p> <p>12 Q. Sir, I'm going to show you</p> <p>13 what's marked as Defendant's Exhibit N</p> <p>14 for identification which purports to be</p> <p>15 an email from a Craig Keen to New York,</p> <p>16 it has Bates stamp RRB 1-042, and it was</p> <p>17 given to me by your attorney.</p> <p>18 MR. RUBENSTEIN: What was M?</p> <p>19 MR. KERN: It was the other</p> <p>20 photo. No, I'm sorry, it was the</p> <p>21 other statement, it was Kirschner's</p> <p>22 statement.</p> <p>23 MR. RUBENSTEIN: Thank you.</p> <p>24 MR. DINHOFFER: For the record</p> <p>25 just with regard to the document,</p>
<p style="text-align: right;">Page 155</p> <p>1 DANIEL WHALEN</p> <p>2 of complaints, headaches, shoulder aches.</p> <p>3 It just -- it all seemed to go together.</p> <p>4 It was one conglomerate of, of pain,</p> <p>5 headaches, neck aches, shoulder, shoulder</p> <p>6 pain.</p> <p>7 Q. Now, did there come a time</p> <p>8 when you stopped working again?</p> <p>9 A. Yes.</p> <p>10 Q. When did you stop working</p> <p>11 after you went back to work in July of</p> <p>12 2012?</p> <p>13 A. It was in January of 2014, the</p> <p>14 beginning. I can't give you a date. The</p> <p>15 beginning of January of 2013.</p> <p>16 Q. That's what I thought.</p> <p>17 MR. DINHOFFER: You said '14</p> <p>18 the first time but you corrected</p> <p>19 yourself. That happens when the</p> <p>20 year changes. We get all confused</p> <p>21 by that.</p> <p>22 Q. Now, why did you stop working?</p> <p>23 A. The advice I had, seeing this</p> <p>24 Dr. Radner and he sent me, he examined</p> <p>25 he, he sent me for tests, he got the</p>	<p style="text-align: right;">Page 157</p> <p>1 DANIEL WHALEN</p> <p>2 note my objection to references to</p> <p>3 collateral sources that are</p> <p>4 contained within the document and</p> <p>5 as to its possible admissibility</p> <p>6 for any use at trial for any</p> <p>7 purpose, given the nature of the</p> <p>8 document having to deal with a</p> <p>9 collateral proceeding that is</p> <p>10 otherwise inadmissible.</p> <p>11 MR. BAILEY: Disagree for the</p> <p>12 record.</p> <p>13 MR. DINHOFFER: Yes, that's</p> <p>14 okay, I know you would. When have</p> <p>15 we ever agreed? On the music.</p> <p>16 MR. BAILEY: Question is not</p> <p>17 going to be that long on this,</p> <p>18 guys.</p> <p>19 MR. DINHOFFER: He's got to</p> <p>20 look at it next. Read it</p> <p>21 carefully.</p> <p>22 Q. The question is going to be,</p> <p>23 take a look at the document --</p> <p>24 MR. DINHOFFER: Listen to his</p> <p>25 question. You want to ask the</p>

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<p style="text-align: right;">Page 198</p> <p>1 DANIEL WHALEN</p> <p>2 Q. Well, it would be better if</p> <p>3 you could just explain it.</p> <p>4 MR. DINHOFER: Would you like</p> <p>5 the document to refresh your</p> <p>6 recollection while you testify?</p> <p>7 A. Well, it's just a lot. It's a</p> <p>8 lot of information. Do you want me to go</p> <p>9 through the entire?</p> <p>10 Q. Well what I'm basically trying</p> <p>11 to get at, is it a strenuous job?</p> <p>12 A. Yes, it is.</p> <p>13 Q. Is it physically demanding?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Do you have to do heavy</p> <p>16 lifting?</p> <p>17 A. Yes.</p> <p>18 Q. What kind of heavy lifting do</p> <p>19 you have to do?</p> <p>20 A. Everything is heavy,</p> <p>21 everything is. There's no light tools,</p> <p>22 there's no light ladders. It's all</p> <p>23 heavy.</p> <p>24 Q. And what is the heaviest</p> <p>25 object you would have to carry during the</p>	<p style="text-align: right;">Page 200</p> <p>1 DANIEL WHALEN</p> <p>2 tools, hooks.</p> <p>3 Q. Is it fair to say that</p> <p>4 generally those things weighed between 50</p> <p>5 and a hundred pounds?</p> <p>6 A. I'd say no, not quite that</p> <p>7 high, but 50 pounds it would, it would</p> <p>8 not -- it wouldn't -- it wouldn't be out</p> <p>9 of the ordinary to say something weighed</p> <p>10 50 pounds.</p> <p>11 Q. Okay. Fair enough. Prior to</p> <p>12 your employment with the railroads, did</p> <p>13 you work anywhere else?</p> <p>14 A. Yeah, I had a lot of jobs.</p> <p>15 Q. Okay. What kind of jobs did</p> <p>16 you have?</p> <p>17 A. I drove a taxicab. I did</p> <p>18 roofing. I did carpentry work. I built</p> <p>19 kitchen, kitchen cabinets. Carpenter's</p> <p>20 apprentice. I drove heavy equipment,</p> <p>21 heavy equipment operator. What else did</p> <p>22 I do?</p> <p>23 Q. During the course of those</p> <p>24 employments, did you have to do heavy</p> <p>25 lifting?</p>
<p style="text-align: right;">Page 199</p> <p>1 DANIEL WHALEN</p> <p>2 course of your job duties?</p> <p>3 A. The heaviest object I would</p> <p>4 have to carry during the course of my job</p> <p>5 would be a device called a rerailer.</p> <p>6 Takes two people to carry it.</p> <p>7 Q. How heavy was that?</p> <p>8 A. You know what, 200 pounds.</p> <p>9 Q. How often would you have to</p> <p>10 carry that?</p> <p>11 A. Any time there was a</p> <p>12 derailment.</p> <p>13 Q. And how often -- well --</p> <p>14 A. Well, come on.</p> <p>15 Q. Wouldn't be too often?</p> <p>16 A. Well actually you'd be</p> <p>17 surprised. My point was you never know.</p> <p>18 You might have three in a row, you might</p> <p>19 have weeks without one.</p> <p>20 Q. Okay. Other than during the</p> <p>21 derailment, what was the heaviest object</p> <p>22 you would carry like on a regular basis?</p> <p>23 A. We pick up locks, chains, come</p> <p>24 alongs, bars, brake beams, springs,</p> <p>25 knuckles, knuckle components, ladders,</p>	<p style="text-align: right;">Page 201</p> <p>1 DANIEL WHALEN</p> <p>2 A. Oh, yeah.</p> <p>3 Q. What kind of heavy lifting did</p> <p>4 you have to do?</p> <p>5 A. Roofing is carrying shingles</p> <p>6 up on the roofs.</p> <p>7 Q. And how heavy were the</p> <p>8 shingles?</p> <p>9 A. I think they were 60 pounds a</p> <p>10 bundle.</p> <p>11 Q. And what about as a truck</p> <p>12 driver, did you have to load and unload</p> <p>13 the trucks yourself or did someone do</p> <p>14 that for you?</p> <p>15 A. I was never really involved</p> <p>16 with -- anything that we had to load on</p> <p>17 to the truck normally was loaded on with</p> <p>18 a crane and I was the crane operator, so</p> <p>19 wouldn't be involved in the actual</p> <p>20 lifting.</p> <p>21 Q. Okay. Prior to the year 2000,</p> <p>22 procedure that you had on your cervical</p> <p>23 region, had you had any other injuries to</p> <p>24 the cervical region prior to 2000?</p> <p>25 A. I had no surgery in 2000.</p>

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<p style="text-align: right;">Page 202</p> <p>1 DANIEL WHALEN</p> <p>2 Q. You had an epidural I think we</p> <p>3 established?</p> <p>4 MR. DINHOFFER: He's calling</p> <p>5 the shot a procedure.</p> <p>6 A. Oh, oh. Like I told the</p> <p>7 lawyer, at times in my life I had muscle</p> <p>8 spasms on the right side of my neck. The</p> <p>9 dates I can't tell you. But they were</p> <p>10 muscle spasms and they were controlled by</p> <p>11 cyclobenzaprine. They went away.</p> <p>12 Q. Prior --</p> <p>13 A. I could sleep in an air</p> <p>14 conditioned room, if the air, the cold</p> <p>15 air blew on my neck the muscle would</p> <p>16 tighten up and it would stay there for</p> <p>17 three or four days unless I had</p> <p>18 cyclobenzaprine. Then it would go away.</p> <p>19 Q. Prior to 2000, had you ever</p> <p>20 had any kind of job-related accident or</p> <p>21 any other accident in which you injured</p> <p>22 the cervical region of your neck?</p> <p>23 A. No.</p> <p>24 Q. Prior to 2000 had you ever</p> <p>25 been in any kind of car accident?</p>	<p style="text-align: right;">Page 204</p> <p>1 DANIEL WHALEN</p> <p>2 MR. RUBENSTEIN: Yes.</p> <p>3 MR. DINHOFFER: Okay, not</p> <p>4 cervical.</p> <p>5 Q. In August of '85 did you see a</p> <p>6 Dr. Robert Booth?</p> <p>7 A. I have no recollection --</p> <p>8 recollection of a Dr. Booth.</p> <p>9 Q. Does Nyack Orthopedic and</p> <p>10 Sports Medicine ring a bell?</p> <p>11 A. What is it?</p> <p>12 Q. Nyack Orthopedics and Sports</p> <p>13 Medicine. Sorry, it was October 1st,</p> <p>14 1990.</p> <p>15 A. Nyack?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. Robert booth, MD?</p> <p>19 A. No.</p> <p>20 Q. Do you remember ever seeing a</p> <p>21 Dr. Fenton?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you tell Dr. Fenton</p> <p>24 that you had injury to your back from</p> <p>25 playing tennis in August of 1985?</p>
<p style="text-align: right;">Page 203</p> <p>1 DANIEL WHALEN</p> <p>2 A. No.</p> <p>3 Q. Since 2000 have you been in</p> <p>4 any car accident?</p> <p>5 A. No.</p> <p>6 Q. In February of 1984 while</p> <p>7 working for CSX, were you struck by a</p> <p>8 hose and had back injuries at that time?</p> <p>9 A. I think it was a chain.</p> <p>10 Q. Actually that was later.</p> <p>11 A. A hose?</p> <p>12 Q. Yes. February '84 struck by a</p> <p>13 hose, do you recall that? Injuries to</p> <p>14 your back?</p> <p>15 A. No.</p> <p>16 Q. You don't recall that. In</p> <p>17 June of '85 did you strain your back</p> <p>18 while pulling a chain hoist?</p> <p>19 A. Yes.</p> <p>20 Q. On a pickup truck?</p> <p>21 A. Yes.</p> <p>22 Q. And that was a back injury?</p> <p>23 A. Yes.</p> <p>24 MR. DINHOFFER: When you say</p> <p>25 back, you mean lumbar, right?</p>	<p style="text-align: right;">Page 205</p> <p>1 DANIEL WHALEN</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall telling Dr.</p> <p>4 Fenton that in October of 1985 you again</p> <p>5 had pain in your back from playing</p> <p>6 tennis?</p> <p>7 A. No.</p> <p>8 Q. The incident with the knuckle</p> <p>9 in December of 1986, do you remember</p> <p>10 telling the doctors that you felt a snap</p> <p>11 in your lower back?</p> <p>12 A. No. I remember climbing up a</p> <p>13 ladder on a locomotive and feeling a</p> <p>14 snap, but I don't remember when it --</p> <p>15 that was several hours later. I don't</p> <p>16 remember, I don't remember that at the</p> <p>17 time of the incident.</p> <p>18 Q. You don't remember telling any</p> <p>19 of your doctors that you felt a snap in</p> <p>20 your back?</p> <p>21 A. I remember, I just told you, I</p> <p>22 remember the pain when I tried to climb</p> <p>23 up a locomotive, the ladder of a</p> <p>24 locomotive later that night.</p> <p>25 Q. Did you ever tell any of your</p>

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1 DANIEL WHALEN
 2 I do not know. I can't answer that
 3 question. I'm trying to answer the
 4 question but I can't.
 5 **Q. Did any doctor, any doctor or**
 6 **healthcare provider ever give you the**
 7 **results of any of those MRIs or CAT scans**
 8 **or whatever they were?**
 9 A. Yeah, I had lots of them.
 10 **Q. What did they tell you, what**
 11 **did they tell you the results were?**
 12 A. I had all kinds of different
 13 results, herniated disks, impingement, I
 14 don't know, list of, there's pages of
 15 stuff.
 16 **Q. Now earlier you mentioned Dr.**
 17 **Radner did a surgical procedure on you;**
 18 **is that correct?**
 19 A. No.
 20 **Q. Dr. Radner never did surgery?**
 21 A. No.
 22 **Q. Just so the record is clear,**
 23 **how many surgical procedures have you had**
 24 **on your neck, and I'm not counting**
 25 **injections, I'm just talking surgery,**

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1 DANIEL WHALEN
 2 **since this accident?**
 3 A. Two.
 4 **Q. Who did the second surgery?**
 5 A. Andrew, Dr. Andrew Casden.
 6 **Q. When was -- and when was the**
 7 **second surgery done?**
 8 A. End of April of this year.
 9 MR. DINHOFFER: Last year.
 10 This is a new year.
 11 THE WITNESS: Yes, yes.
 12 **Q. 2014, that's all right.**
 13 MR. DINHOFFER: There hasn't
 14 been an April of this year so it's
 15 obvious.
 16 MR. KERN: Exactly.
 17 **Q. What did that surgery involve,**
 18 **to the best of your recollection, I know**
 19 **you're not a doctor.**
 20 A. She fused 4, 5, 6 and 7. 2,
 21 4, 6, 8, 10, 12.
 22 **Q. To your understanding what was**
 23 **fused during the first surgery, same**
 24 **disks or different?**
 25 A. First surgery was anterior, I

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1 DANIEL WHALEN
 2 believe they fused 3 and 4.
 3 **Q. As you sit here today, do you**
 4 **have any further surgeries scheduled for**
 5 **your cervical spine?**
 6 A. No.
 7 **Q. As you sit here today, do you**
 8 **anticipate -- do you want to schedule any**
 9 **further surgeries for your cervical**
 10 **spine?**
 11 A. Do I want?
 12 **Q. Do you feel --**
 13 A. No, I don't want anybody
 14 cutting into my neck again, believe me.
 15 **Q. Do you feel you need any --**
 16 A. Twice is enough.
 17 **Q. Do you feel that you need any**
 18 **further surgeries on your cervical spine**
 19 **as you sit here today?**
 20 A. I am having some sort of
 21 cerebral problems. I don't know, they
 22 don't know, if it's related to my spine
 23 because the pain emanates, emanates from
 24 my cervical, the cervical area of my
 25 spine.

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1 DANIEL WHALEN
 2 **Q. Now you say cerebral problems.**
 3 **What do you mean by that?**
 4 A. Extreme headaches.
 5 **Q. And how long have you had**
 6 **those extreme headaches?**
 7 A. They've been going on since
 8 surgery.
 9 **Q. The first surgery or the**
 10 **second one?**
 11 A. Second one.
 12 **Q. And who have you treated with,**
 13 **if anyone, for those extreme headaches?**
 14 A. Well, we were treating with
 15 the physical therapy in the hopes that
 16 that would make them go away.
 17 **Q. When did you do physical**
 18 **therapy after the second surgery?**
 19 A. I think they waited two months
 20 until I started physical therapy.
 21 MR. DINHOFFER: Mike, just so
 22 you're clear when Larry questioned
 23 him about it he also said he's
 24 treating with Dr. Zarcone.
 25 **Q. How long did you -- how long**

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